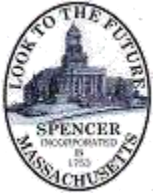


# Zoning Board of Appeals – Town of Spencer



## *Minutes*

Zoning Board of Appeals  
Tuesday, December 22, 2009  
McCourt Social Hall  
Memorial Town Hall

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The Meeting was called to order at 7:15 p.m.

Zoning Board of Appeals Members Present: Chairman Allan Collette, Joanne Backus, and Albert Drexler (alternate).

Zoning Board Members Absent: Clerk Pamela Crawford and Delores Kresco (alternate).

Staff present: Adam Gaudette, ODIS Director.

In the absent of Clerk Pamela Crawford, Chair Allan Collette appointed Joanne Backus as acting Clerk.

### **New Business:**

#### **A. Special Permit – Owner: William Casey Estates, Applicant: Philip Stoddard, for property located on 4 Joliceour Avenue and 84 & 86 Cranberry Meadow Road.**

Mr. Collette opened the public hearing at 7:20 pm. The Clerk read the brief. The applicant is requesting a special permit in accordance with Sections 4.2.H and 4.8.6 of the Spencer Zoning Bylaws for removal of gravel material and to re-grade the lots for the future construction of three single-family homes. The property is located in the Rural Residential Zoning District.

Mr. Collette asked if the applicant has any information to add to the application.

Mr. Stoddard said the application is essentially renewing a previous special permit which was approved by the Board in October of 2007. The plan (gravel removal) was put on hold due to the economy and market conditions, and the special permit had since expired.

Mr. Collette asked if there is any change to the plan, what is the time line of the operation, and how much material will be removed?

Mr. Stoddard said there is no change to the plan. He thinks it would take 90 - 270 days to complete the operation. The amount of material to be removed is about 4,000 cubic yards; approximately 30,000 to 40,000 tons as stated on the application. The material will be trucked off the site.

The plan is to remove material from the lots for the proposed construction of three single family homes.

Mr. Collette asked if the applicant plans to remove the material one lot at a time, or do the 3 lots at once. He also inquired as to which direction/route the trucks will travel out of Spencer after picking up the material from the site.

Mr. Stoddard said the material on the 3 lots will all be removed at once. From the site, the truck will use Cranberry Meadow Road to Henshaw/Stafford Streets, via Bacon Hill and then on to Route 31, traveling out of Spencer.

At this time Mr. Collette opened the hearing to the public.

*Note: No one in the audience wished to speak.*

Mr. Drexler expressed concerns on the volume of the traffic and equipment on the road during the operation – disrupting the neighborhood. Ms. Backus also commented that there should be restrictions in regards to the number of days and the hours of the operation – in order to limit noise disturbance to the neighbors.

All members agreed and will specify the restrictions (number of days and hours) in the conditions of decision.

Mr. Drexler made a motion to close the discussion at 7:35 p.m. Ms. Backus seconded the motion and the vote was 3-0 in favor.

Mr. Drexler made a motion to grant the special permit to William Casey Estates for the removal of gravel material and to re-grade the 3 lots for the future construction of three single-family homes at 4 Joliceour Avenue and 84 & 86 Cranberry Meadow Road. Ms. Backus seconded the motion and the vote was 3-0 in favor. The following was included in the motion:

***Findings:*** The Board determined that the findings had met the requirement in M.G.L., Chapter 40A., Sec. 9 and Section 7.2 of the Spencer Zoning Bylaws:

1. That the purposed use is in harmony with the general purpose and intent of the zoning bylaw and any applicable subsections herein;
2. That the proposed use will not create undue traffic congestion nor unduly impair pedestrian safety;
3. That the proposed use will not impair the integrity or character of character of the district or adjoining zones nor will it be detrimental to the health, safety or welfare of the neighborhood or the Town.

This approval is granted with the following ***conditions:***

1. The site plan entitled “Conservation Plan” and dated March 13, 2008 is herein incorporated as part of this decision.

2. Construction activity shall not commence until all required approvals and permits are obtained.
3. No removal activity shall be permitted earlier than 9:00 am or later than 5:00 pm Monday through Friday, nor earlier than 7:00 am or later than 12:00 pm on Saturday, or anytime on Sunday or holidays as celebrated by the Town.
4. The applicant and/or his representatives must post signage informing residents of the starting date of the earth removal operation and the signage shall be removed at the end of the operation.
5. Erosion Control measures shall be installed and approved by the Office of Development & Inspectional Services (ODIS).

Mr. Gaudette explained that once the decision has been filed with the Town Clerk, staff from ODIS will mail the copy of the decision along with the instructions to the applicant, and to all abutters.

**B. Special Permit – Owner: Francis Gaudette, Applicant: Jacob Cutler, for property located on 60 Chestnut Street.** Mr. Collette opened the hearing at 7:40 pm. The Clerk read the brief. The applicant is requesting a special permit in accordance with Section 4.9.3.C of the Spencer Zoning Bylaws to extend the pre-existing, non-conforming retail market use to allow for the custom building, selling and servicing of motorcycles. The property is located in the Village Residential Zoning District (VR).

Mr. Adam Gaudette, Spencer Town Planner, presented correspondence received today (12-22-09) to the Board. It is a petition opposing the business and signed by abutters. Mr. Collette read the content to the public:

“I, Charlene Stavros, being the owner of 52 Chestnut and 29 Elm Streets, do oppose a zoning change. After talking with people that have an invested interest in 60 Chestnut Street and 29 Elm Street, I have asked them to sign a petition because December 22, 2009 is not convenient for us to be at the meeting.”

There is a list of signatures attached to the letter. Mr. Collette welcomed the audience, who were present at the meeting, to look at the list if interested. He also requested to have this correspondence be recorded into tonight’s minutes.

Mr. Collette made a clarification that the applicant seeks to extend the pre-existing, legal-non-conforming retail market use. He is not requesting a zoning change.

Mr. Collette asked the applicant for a presentation of the application, and a brief summary of his current business.

Mr. Douglas Cutler, co-owner of Barnstorm Cycles, stated that the business is a full service motorcycle shop specializing in custom built and custom fabrication as well as motorcycle sales, service, parts and accessories. The business has two locations in Worcester, a repair shop at 130 Elm Street, and a showroom at 300 Main Street. The proposed location, 60 Chestnut Street, is a

formal retail supermarket and has a pre-existing business use that may be extended by obtaining a special permit from the ZBA. Mr. Cutler is presently residing in Spencer and would like to relocate his existing business here.

The proposed location is in the VR zoning district. In general motorcycles do generate roaring loud noise and this could become nuisance to the neighbors in the area. Mr. Collette asked whether the applicant has any plans to keep the noises to a minimum level.

Mr. Cutler said the Board's concern on noise level is understandable. His current repair shop, (on 130 Elm Street, Worcester) is in the historical zoning district next to the restricted residential zoning district area which is more dense when compared to the proposed location (on 60 Chestnut Street, Spencer). The business was established several years ago and there has never been a complaint (noise) from the neighbors. He has developed a good rapport with the area residents. Mr. Cutler then referred to supporting letters from neighbor-residents who live on Elm Street, Worcester.

Mr. Collette asked if the business is to service to a particular "brand-name" of motorcycles.

Mr. Cutler said the business will service to every "brand-name", from small scooter-like to large size motorcycles.

Ms. Backus inquired as to days and hours of business, and how many motorcycles are for sale at any given time? In addition, would you consider parking motorcycles outside within the site as to display it for sale – to the public?

The business will be opened Monday through Friday, from 8:00 am to 9:00 pm, and closed on Sunday. He is hoping to sell a "handful" of motorcycles a month. Mr. Cutler said he may occasionally park/station custom-made motorcycles on the property; for the purposes of displaying finished product/merchandise.

The existing business seems to prosper and is well established in Worcester based on Mr. Cutler's presentation. Mr. Drexler asked as to what reasons he wants to relocate the business to Spencer.

Mr. Cutler said he purchased a home in Spencer a year ago, and has been living here since. He has two sons (who also work in the business); one is actually moving now to Spencer, and one is planning to move here later. There are other economic decisions as well. The Commercial Property Tax Rate and the Liability Insurance are very high in Worcester area. Relocating the business to Spencer would cut down on these two big expenses. The business has already established a clientele. It is a short distance from the existing location to Spencer. Mr. Cutler said his clients are loyal and he is confident they will travel to Spencer when they need servicing.

Mr. Drexler commented the site has a large parking lot, motorcycles do not acquire a lot of parking spaces. Mr. Drexler asked if the applicant plans to utilize it for other purposes. Also in terms of fabrication processing, does it require the use of metal-stamping-machinery?

Mr. Cutler explained that 6 of the parking spaces are reserved for people who live in the multi-family homes, thus there are not many parking spaces left. He then identified the location of the multi-family home and the 6-parking spaces on the Assessor's Map. The fabrication processing is mostly associated with welding, does not involve the use of stamping-machinery, and will not go on all day.

Mr. Collette asked if there will be any physical changes to the existing building.

Mr. Cutler has a plan to install an over-head door/garage door to the existing building. He then pointed out the location on the plan.

At this time Mr. Collette opened the hearing to the public for comments and questions.

Mr. Rick LaPierre of 66 Chestnut Street stated that he has been good neighbors with the owner of the property, Francis Gaudette. He does not oppose the business. However, he has some concerns and asked the following questions:

- ✓ Does the business have a paint booth? And if not, the chemical from spray paint would be vented out to the neighbors. It is a health concern.
- ✓ As to the noise level, does the business comply with State Standard Decibel Level? The Grandville Pub is located nearby and it is where bike-riders use as a gathering and socializing place. Mr. LaPierre is concerned that the proposed business would bring more bike-riders and generate more noise to the neighborhood.

Ms. Theresa Cassavant of 26 Elm Street said the existing building is in close proximity to her fence. And the fence is also very close to her house. She is opposing the proposed business for the following reasons:

- ✓ She owns and operates a small business shop in the back of her house. The noise from motorcycles will disturb/interrupt the conduct of business – difficult to hear and communicate with customers.
- ✓ The tenants, who rent an apartment on floor above, work in the evening. They sleep and rest during the day. The noise will disturb them greatly.
- ✓ She will have a difficult time to rent the apartment to other people and the noise will also impact the value of property.

Ms. Cassavant said the applicant could find other locations in Spencer for his business. At this time the Board inquired as where Ms. Cassavant property is located in relation to the proposed business. Mr. Adam Gaudette pointed out location on the plan.

Mr. Cutler responded he understands the above concerns. He takes every precaution when it comes to noises from motorcycles. At his existing repair shop, he informed all clients to keep the noise to the minimum, and has received full cooperation from them. He also owns 25 apartment units which abut the repair shop. Some tenants have small children. He has not had any complaints from them. He has always maintained good relationships with the neighborhood. *He then referred to support letters which were mentioned earlier.*

Ms. Cassavant commented that City residents are different from Town residents. The City has more businesses, people and traffic which are accompanied by loud noises. People who live in the city are accustomed to that environment. In contrast, Spencer is a small town, has a smaller population and fewer businesses and especially at the proposed location. It has always been a quiet area even when the Gaudette Market was in operation. There is a big difference between a market and a motorcycle repair shop business. In addition, the zoning is the Village Residential district, not the Commercial district.

Mr. Charles Comeau of 69 Chestnut Street said, at the present time, there is one motorcycle in the neighborhood. Every time the owner starts, the engine sends echo throughout the whole area. If the repair shop is there, with several motorcycles, the noise will become a nuisance to the residents. He has a difficult time renting out the property already. The repair shop will add to this problem. Mr. Comeau asked if a special permit is granted and there is a complaint, how would the Board handle it.

Ms. Backus said the Town has specialized equipment to measure the noise. Mr. Gaudette said the Town of Spencer has a sound-level-meter. If there is a complaint, the Board of Health Agent would follow up. If the noise were found exceed the regulations, then there can be fines imposed on the individual.

Mr. Collette said there can be restrictions in a Special Permit, if the Board were to grant it to the applicant. The Board has always tried to make the best judgment. He then made an announcement that this is the time for public and residents to express their concerns, and voice their opinions.

Mr. Douglas Vanesse of 27 Elm Street said that the noise is clearly a major concern for everyone. He has been living at his address for about 3 years and noticed the noise level has decreased. He wants to keep it this way. In addition, both streets (Elm and Chestnut) have narrow widths and the proposed business means additional to the traffic. Mr. Vanesse believed the perimeter of the area (Elm and Chestnut Street) in Spencer is in a smaller scale, thus it is more dense versus to the Elm Street area in Worcester.

Mr. Malcolm MacBain of 86 Chestnut Street commented that everyone in the neighborhood opposes the issuance of a special permit. The noise from the business would have an impact on the value of the property. He stated "it is not a good idea" and it serves no purpose for people who live there.

*Note: The applicant proposes to have a business on 60 Chestnut Street which is owned by Francis and Sheryle Gaudette. Mr. Adam Gaudette is Spencer Town Planner, and has no relation with the property owners; Francis and Sheryle Gaudette.*

Mr. Francis Gaudette of 60 Chestnut Street said he grew up in the area and used to ride his motorcycle to and back from work, no one ever had complaint. Generally, a motorcycle does not generate unbearable volume of noise, unless the individual has an intention to rev the engine. He made the following comments and suggestions:

- There are 3 vacant buildings in the area. Objectively, if (at least) one building is renovated and brings up to the current condition, that would be a positive addition to the neighborhood.
- The applicant and his employees have good reputation and are professional. They will work with residents and the Board in regards to above concerns and issues.
- Because of the long cold winter season in New England, the business operates approximately 6 months out of a given year. In addition there are raining days, in that 6 months period, and people will not drive motorcycles. Therefore the volume of the business is limited.
- The business does not involve any chemical spray paint – no health hazards.
- As an option to minimize the noise, a motorcycle can be pushed into the building for servicing and it does not necessary need to be mechanically started.

F. Gaudette also explained his circumstances. Lot 49-1, on Elm Street, was subdivided from Lot 49, on Chestnut Street, and both were owned by his family. The six parking spaces of Lot 49 are reserved for Lot 49-1 as a result of the subdivision. F. Gaudette is the current owner of both properties. He opened the Gaudette Market business on Lot 49, but it was not prosperous and the business then closed. If there were to be a business on lot 49 and with the changes in the zoning bylaw, specifically on parking space regulations, ideally lot 49-1 should also be purchased together with lot 49. To have a prospective buyer make an offer to purchase the two properties has not been easy due to the current economic conditions. F. Gaudette said that Mr. Cutler has made an offer to purchase both properties in stipulation that he could open his business at Lot 49 (60 Chestnut Street).

F. Gaudette asked to give the applicant “an opportunity and a chance” to establish the proposed business at 60 Chestnut Street.

S. Gaudette made a comment that having buildings boarded up would serve no purpose to the area. She said in the past there were business proposals to be established in the area, such as child-care/day-care and pizza eatery. The residents were opposed to all proposals. In her opinion, the residents have negative opinion/feeling toward any type of business – they are not amicable to changes. In order for Spencer to flourish, it needs to bring more business to the town. This proposed business will bring “growth” to the area and to town.

There were no further comments and questions from the Board and the public at this point.

Ms. Backus made a motion to close the discussion at 8:25 p.m. Mr. Drexler seconded the motion and the vote was 3-0 in favor.

Mr. Drexler made a motion to deny the special permit application, from Mr. Jacob and Mr. Douglas Cutler, to change the pre-existing non-conforming retail market use to the manufacturing, sales, and servicing of motorcycles at 60 Chestnut Street, Spencer. Ms. Backus seconded the motion and the vote was 3-0 in favor. The following was included in the motion:

***Findings:*** 1. That the proposed use is not in harmony with the general purpose

and intent of the zoning bylaw and any applicable subsections herein;

2. The proposed will impair the integrity or character of the district or adjoining zones and will be detrimental to the health, safety or welfare of the neighborhood or the Town.

Mr. Adam Gaudette explained that once the decision has been filed with the Town Clerk, staff from ODIS will mail the copy of the decision along with the instructions to the applicants, and to all abutters.

**C. Special Permit and Variance – Owner: Highland Grove, LLC, Applicant: A. Arsenault and Sons Incorporated, for property on 16 West Main Street.**

*C. (1) – Public Hearing for Special Permit. Mr. Collette opened the hearing at 8: 30 p.m. The Clerk then read the brief. The applicant proposes to install a permanent sign to be located within the 8’ minimum front setback which requires special permit relief. The applicant also seeks a variance from the outdoor lighting standards. The property is located in the Commercial Zoning District.*

Mr. Michael Letendre was present tonight, representing Highland Grove, LLC.

Mr. Gaudette has several discussions with Mr. Letendre and Mr. Arnold Arsenault on the application. Mr. Gaudette then gave a brief explanation to the Board. Under Section 6.5.3.E (Free Standing Sign) of the Spencer Zoning Bylaw, a free-standing sign may be located within the required building front setback, but not closer than 8 feet to its property lot line. The applicant requests a special permit relief from *that 8 feet setback requirement* due to the following reasons: (1) The topography of the area, hill and curvy, would have an impact to the sign visibility; (2) The sign would obstruct the sight distance for patrons who are pulling out from the driveway and; (3) In addition, the sign would be in close proximity to the building.

Mr. Gaudette said the applicant proposes an electrical animated sign which is allowed in the Commercial and Industrial Districts by obtaining a special permit from the ZBA.

At this time the Board reviewed the site plan. The Board then asked following questions of Mr. Gaudette and the applicant:

The Board asked for the description/design of the proposed animated sign. Is the applicant considering having picture displays on the animated sign, and what type of pictures?

Mr. Letendre said the proposed animated sign will be similar to the Spencer Furniture’s sign. (*Spencer Furniture Store is located on West Main Street*). Pictures will be seasonal (snow flake, leaves, etc). He said there will not be any inappropriate pictures.

Mr. Gaudette said the proposed animated sign is within the requirements (size and measurement) in according with the sign bylaw.



Does the current sign bylaw have a restriction in terms of the maximum time allowed for the message to be displayed on the animated sign?

Mr. Gaudette said “yes.” In accordance with the sign bylaw, “the message display time shall remain static for a minimum of 8 seconds with a maximum instant message change time of 1 second.”

The area along West Main Street is owned by Mass Highway Department (MHD). The location of the site, 16 West Main Street, is abutting the Mass Highway right of way (Route 9). Is there any buffer requirement from MHD?

Mr. Gaudette addressed that MHD had seen the site plan (which shown the location of the proposed sign) submitted by the applicant for the curb-cut access permit application. If there was any requirement, MHD would have notified the applicant prior to the issuance of the permit. The applicant has already received the permit from MHD.

At this time Mr. Collette opened the hearing to the public for any questions and comments. There were no abutters present tonight that wished to speak during this hearing.

*Mr. Drexler made a motion to close the discussion at 8:45 p.m.* Ms. Backus seconded the motion and the vote was 3-0 in favor.

Ms. Backus made a motion to grant a special permit to A. Arsenault and Sons Incorporated to install a permanent animated sign to be located within 8 feet minimum front setback on 16 West Main Street. Mr. Drexler seconded the motion and the vote was 3-0 in favor. The following was included in the motion:

***Findings:*** The Board determined that the findings had met the requirement in M.G.L, Chapter 40A., Sec. 9 and Section 7.2 of the Spencer Zoning Bylaw:

1. That the proposed use is in harmony with the general purpose and intent of the zoning bylaw.
2. That the proposed use will not create undue traffic congestion nor unduly impair pedestrian safety.
3. That the proposed use will not impair the integrity or character of the district or adjoining zones, nor will it be detrimental to the the health, safety, or welfare of the neighborhood or the Town.

This approval is granted with the following ***conditions:***

1. That the free-standing sign shall be allowed to be located within the 8 feet front setback from the property line abutting the Mass Highway right of way for Route 9.
2. That the free-standing sign shall be allowed to contain animation in accordance with Section 6.5.3.E.4.8, which states “The message display time shall remain static for a minimum of 8 seconds with a maximum instant message change time of 1 second.

Mr. Gaudette explained that once the decision has been filed with the Town Clerk, staff from ODIS will mail the copy of the decision along with the instructions to the applicant, and to all abutters.

*C.(2) - Public Hearing for Variance. Mr. Collette opened the hearing at 8:50 p.m. The applicant seeks variance relief from the Outdoor Lighting standards.*

Mr. Gaudette explained the applicant received Site Plan approval from the Planning Board for the project. The lighting section on the site plan is required to be in compliance with the Zoning Bylaw.

Mr. Gaudette explained Section 6.4.2 of the Spencer Zoning Bylaw. It states all commercial and industrial uses which are required to obtain site plan approval shall meet the outdoor lighting standards in that: *Flood and area lighting is unacceptable, and light trespass shall not be permitted onto adjacent properties or onto any street.*

Mr. Letendre stated that two robberies have occurred since the project started. Expensive equipment and trailers are stored in the back and there is no lighting. The applicant hired a lighting consultant and they have provided two different proposals of lighting plans. Mr. Gaudette went over the two plans with the Board:

**First plan** – If the lighting has to be in compliance with the requirement, no use of flood light, light trespass, and restricted number of foot-candle level. The fixtures cost is approximately \$20,000, and if adding installation and electrical works, the total cost could reach \$30,000.

**Second plan** – This plan is proposing using some flood lights (in certain areas) with a minimum of light trespassing onto neighbor properties. The total cost is approximately \$6,000.

The second plan provides a chart that demonstrates the distance of light trespass from the locations of flood light to the two abutting properties. The applicant has obtained letters of support from the two abutters, Mr. Jeff Derosier and Father Jim Hoey of Mary Queen of Rosary. Both have no objection to the Second Plan – using the floodlights in specified locations.

In conclusion, if the outdoor lighting must comply with the requirements, it will impose a financial hardship on the applicant due to the topography of location (slope front to back). At this time the Board reviewed the two plans and acknowledged/realized the hardship on the applicant.

Mr. Collette opened the hearing to the public for any comments and questions. There were no abutters present tonight that wished to speak during the hearing.

*Mr. Drexler then made a motion to close the discussion at 9:00 p.m. Ms. Backus seconded the motion and the vote was 3-0 in favor.*

Ms. Backus made a motion to grant a variance to A. Arsenault and Sons Incorporated, for the Outdoor Lighting in the Zoning Bylaws to allow lighting and minimal light trespass as proposed on 16 West Main Street. Mr. Drexler seconded the motion and the vote was 3-0 in favor. The following was included in the motion:

**Findings:** The Board determined that the findings had met the requirement in M.G.L., Chapter 40A., Sec. 11 and Section 7.3 of the Spencer Zoning Bylaws:

1. Owing to circumstances relating to the soil conditions, shape or topography of land or structures, and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this-by-law would involve substantial hardship, financial or otherwise to the petitioner or appellant.
2. That desirable relief may be granted without substantial detrimental to the public good and without nullifying or substantially derogating from the intent or purpose of this-by-law.

This approval is granted with the following **conditions**:

1. That a variance is granted to allow for the use of flood lighting as proposed.
2. That a variance is granted to allow for minimal light trespass onto adjacent properties as proposed.

Mr. Gaudette explained that once the decision has been filed with the Town Clerk, staff from ODIS will mail the copy of the decision along with the instructions to the applicant, and to all abutters.

### **Old Business:**

**A. Continued Public Hearing – Richard and Marian Cogswell, Jameson Lane and Eastalee Drive.** Mr. Gaudette gave a brief summary to the Board. The hearing was initially scheduled for October 13, 2009. There were three members present, but one member requested to be recused from the hearing. Therefore there were not enough members to have a quorum. Mr. and Mrs. Cogswell also addressed that the prospective buyer had wanted to do an assessment on the property. In order to undertake the assessment process, the applicants requested to postpone the hearing to a later date.

Mr. Gaudette stated that the Board is required to hold a public hearing within 65 days after the filing of an application as accordance to Spencer Zoning Bylaw. If postponed, the applicants need to sign a “waiver form” to waive the 65 days requirement, and submitted it to ODIS.

The Board decided, at that night (10-13-09), not to open the hearing and has postponed it. The hearing was postponed to tonight, December 22, 2009.

**At this point Mr. Collette opened the hearing at 9:05 p.m.** The Clerk then read a brief. The applicants request a Variance in accordance with Section 5 and Table 5.1 of the Spencer Zoning

Bylaws. The applicants seek relief of the minimum lot area and setbacks requirements. The property is located in the Rural Residential Zoning District.

The applicants explained the lot was a result from an ANR and was located in R 22.5 zoning district in accordance to Assessor Zoning Map, it contains 26,025 sf. The applicants took the ownership of the lot since 1972 with the understanding it is a conforming lot.

In 2006, the applicants applied for a building permit, and it came to light the lot does not conform to the square feet requirement as a buildable lot at that time (1972). The Assessor and the Zoning Enforcement Officer/Building Inspector discovered the lot was actually located in R 45, not R 22.5, in the Assessor Zoning Map. The Zoning Bylaw at the time (1972) required a minimum of 30,000 sf to be a conforming buildable lot. Since the lot in question does not meet the requirement, the applicants need to obtain a variance from the ZBA in order to construct a building on the lot.

The ZBA granted the variance in August, 2006, however the applicants have never used it, and it has elapsed. Now the applicant has a prospective buyer interested to purchase this lot with a stipulation that the variance could be renewed or a new variance could be granted again. The applicants are here tonight to present their case to the Board.

*Note: There were no abutters present in this hearing.*

At this time the Board reviewed the previous approval of 2006. Mr. Gaudette stated the previous approved variance granted *relief from the minimum lot area requirement to allow a non-conforming lot to become a buildable, legal nonconforming lot*. He made a clarification the lot is a corner lot (Jameson Lane & Estalee Drive) and the frontage area meets the requirement (200 ft). The language on the decision, if the Board granted tonight, should be more descriptive and simplified.

The Board agreed the language in the decision on variance should be more precise in specifying the relief area. The variance should also indicate that it allows relief on the front setback area (from 55 to 25 feet), and side/rear setback area (from 25 to 15 feet) requirements. (Due to the unknown of where/how the location of the house would be situated on the property, the potential owner does not have to apply for another variance from the ZBA.

With no further questions and comments from the Board, Ms. Backus made a motion to close the discussion at 9:20 p.m. Mr. Drexler seconded the motion and the vote was 3-0 in favor.

Mr. Drexler made a motion to grant a variance to Mr. and Mrs. Cogswell to allow the non-conforming of 26,025 square feet of area to be buildable lot (when the lot was originally created in 1970, the minimum area required was 30,000 square feet). The current Zoning Bylaw in the Rural Residential Zoning District is required the minimum area of 60,000 square feet. The variance also allows the minimum front setback requirement from 55 to 25 feet; side and rear setbacks requirement from 25 to 15 feet. Ms. Backus seconded the motion and the vote was 3-0 in favor. The following was included in the motion:

**Findings:** The Board determined that the findings had met the requirement in M.G.L, Chapter 40 A., Sec 11 and Section 7.3 of the Spencer Zoning Bylaws:

1. Owning to circumstances relating to the soil condition, shape or topography of land or structures, and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this by-law would involve substantial hardship, financial or otherwise to the petitioner or appellant.
2. That desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this by-law.

This approval is granted with the following **conditions:**

1. This variance grants relief from the minimum area requirement of 60,000 square feet.
2. This variance grants relief from the minimum front setback requirement of 55 feet and allows for a minimum of 25 feet; and from the minimum side and rear setback of 25 feet and allows for a minimum of 15 feet.
3. Construction activities shall not commence until all required approvals and permits are obtained.

Mr. Gaudette explained that once the decision has been filed with the Town Clerk, staff from ODIS will mail the copy of the decision along with the instructions to the applicant, and to all abutters.

**Approval of Minutes: None**

**Other Business: None**

With no further discussion, Mr. Drexler then made a motion to adjourn the meeting at 9:20 p.m. Ms. Backus seconded the motion and the vote was 3-0 in favor.

Submitted By:

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Bea Meechan, Senior Clerk ODIS